HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No. 21338 of 2006

Between:

BHL Staff & Workers' VRS Pensioners Society,
represented by its General Secretary,
Hyderabad. …Petitioner

And

The Appellate Authority for Industrial
and Financial Reconstruction, New Delhi
and two others. …Respondents

:: O R D E R ::

Counsel for the petitioner : Sri Syed Abdul Saleem
Counsel for respondent No.1 : Sri A.Rajashekar Reddy,
Assistant Solicitor General.

Counsel for respondent No.3 : Sri V. Venkata Ramana

16th April, 2007

Per G.S. Singhvi, C.J.

This petition is directed against order dated 18-9-2006 passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi (hereinafter referred to as 'the Appellate Authority'), whereby Appeal No.43 of 2006 filed by the petitioner against the order of the Board for Industrial and Financial Reconstruction (for short, 'the Board') was dismissed as barred by limitation.

The petitioner is a registered society. It claims to be representative body of the employees of M/s. Bakelite Hylam Ltd. including those who accepted voluntary retirement scheme framed by

the employer. Respondent No.3 filed an application under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'the Act'). On 2-1-2004, the Board declared respondent No.3 company sick within the meaning of Section 3(1)(o) of the Act and appointed State Bank of Hyderabad as the operating agency with directions to conduct techno-economic viability study and prepare report on the possible revival of the company. However, on account of the company's failure to submit fully tied-up rehabilitation proposal, the Board, vide its order dated 10-11-2004, directed the operating agency to issue advertisement for change of management of the company. The latter challenged the same by filing an appeal under Section 25 of the Act, which was dismissed by the Appellate Authority with liberty to the company to raise all the points before the Board at an appropriate stage.

On 1-8-2005, the Board heard the representatives of the parties including the petitioner on the issue of sanction of the scheme in terms of Section 18(4) read with Section 19(3) of the Act and reserved the order. After 21 days, the Board passed order dated 22-8-2005, whereby modified scheme for rehabilitation of the company was sanctioned. Paragraph 11 of that order reads as under:

> "11. Having heard the submissions and considering the material facts on record and also having regard to the fact that all the parties concerned having given their consent u/s 19(2) of the Act to the various provisions of the above scheme, in exercise of the powers conferred u/s 18(4) of the Act read with Section 19(3) of the Act, the Bench sanctions the enclosed scheme with modifications, hereinafter called the 'Sanctioned Scheme' for rehabilitation of the company. The Sanctioned Scheme shall come into force with immediate effect."

A perusal of the record shows that copy of the aforementioned order was issued to the petitioner on 14-2-2006. On the very next day, the petitioner filed an appeal under Section 25 of the Act. In paragraph 4 of the affidavit filed by him, Sri Earrum Sanjeeva Raju, General Secretary of the petitioner categorically averred that he received

certified copy of the order of the Board on 14-2-2006 and the appeal was being filed within the time specified in Section 25(1) of the Act. However, without even adverting to the affidavit, the Appellate Authority dismissed the appeal by recording an extremely cryptic order dated 18-9-2006, the relevant extracts of which read as under:

> "We find that the appeal preferred before us is barred by limitation under the provisions of SICA.
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> As the AAIFR has no power or jurisdiction or authority to condone the delay in filing the appeal under the provisions of SICA, the appeal stands dismissed."

Sri Syed Abdul Saleem, learned counsel for the petitioner argued that the impugned order is liable to be quashed because it is totally devoid of reasons and does not satisfy the requirement of a speaking order, which the Appellate Authority was required to pass. Learned counsel submitted that while deciding the appeal preferred by the petitioner, the Appellate Authority was exercising quasi-judicial function and, therefore, it was duty-bound to record reasons and communicate the same to the party, but without even adverting to the affidavit of Sri Earrum Sanjeeva Raju filed in support of the appeal, the Appellate Authority dismissed the appeal as barred by time. Learned counsel invited our attention to the impugned order to show that hearing on the application filed by respondent No.3 had taken place on 1-8-2005, the order was pronounced on 22-8-2005, and copy thereof was issued to the petitioner on 14-2-2006. He then argued that the appeal filed within one day of the issue of copy of the order could not have been treated as barred by time. In support of his argument, Sri Saleem strongly relied on the judgment of the Single Bench in **Dewan Bahadur Ramgopal Mills Ltd. v. Appellate Authority for Industrial and Financial Reconstruction**[1].

Sri V. Venkataramana, learned counsel for respondent No.3 pointed out that in terms of Section 25 of the Act, an appeal is required to be preferred within 45 days from the date on which copy of the order

passed by the Board is issued, and argued that the appeal preferred by the petitioner after more than six months of pronouncement of the order by the Board was rightly dismissed as barred by time. Learned Counsel relied on Clause 38 of the Board for Industrial and Financial Reconstruction Regulations, 1987 (for short, 'the Regulations') and argued that a party desirous of challenging the order passed by the Board has to file an application for issue of copy of the order and the Board is not obliged to suo motu issue copy to the aggrieved party.

We have considered the respective arguments/submissions and examined the relevant provisions. Section 25 of the Act and Clause 38 of the Regulations, which have bearing on the decision of the writ petition, read as under:

"**Section 25 of the Act**

25. Appeal.- (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against or remand the matter to the Board for fresh consideration."

Clause 38 of the Regulations

38. Inspection and copies of documents, etc.-(1) A party to any proceeding before the Board may, subject to regulation 37 of these regulations, on an application made by him in that behalf addressed to the Secretary, be allowed, during office hours, to inspect or get copies of records, including documents in the proceedings, on payment of the fees and charges as prescribed by these regulations.

(2) The Secretary may, subject to the provisions of regulation

37, on the application of a person, who is not a party to the proceedings, on good cause shown, allow such inspection or to obtain such copies, as are mentioned in the last preceding sub-regulation, on payment of the fees/charges as prescribed by these regulations.

Provided that such inspection or furnishing of copies of documents may be allowed without any fees/charges, to reputed research institutions, bona fide scholars or academicians, subject to such restrictions and conditions as may be deemed necessary to ensure proper use of the information/material or the copies, as the case may be, so obtained, or to prevent their misuse.

(3) An inspection shall be allowed only in the presence of an officer of the Board and copies of documents etc., shall not be allowed to be taken, but notes of inspection may be taken.

(4) Copying charges shall be worked out at the rate of Rs.10 for a folio or part thereof, of material not involving typing of statements and figures and at the rate of Rs.20 per folio or part thereof, involving typing of statements or figures. Fees for inspection shall be worked out at the rate of Rs.100 per hour of inspection.

(5) Every duly authorised officer of the Central Government, a State Government or a person duly authorised by a public financial institution, State level institution, the Reserve Bank or, as the case may be, a scheduled bank shall be entitled, on authorisation by the Secretary, at all reasonable times, to inspect the file of the proceedings before the Board and to take copies or extracts from any document therein and to be furnished such copies of extracts.

(6) Secretary may delegate the powers to allow inspection and supply copies of records, including documents referred to in sub-regulations (1) and (2) of this regulation to the Registrar."

An analysis of Section 25 shows that any person aggrieved by an order of the Board can prefer an appeal within 45 days from the date of issue of copy of the order to him. Proviso to Section 25(1) empowers the Appellate Authority to entertain an appeal after 45 days, but not after 60 days of the issue of copy of the order by the Board. The expression 'from the date on which a copy of the order is

issued to him' appearing in the substantive part of Section 25(1) and the expression 'from the date aforesaid' appearing in the proviso make it clear that the Board is under an obligation to issue copies to the parties to the proceedings and the appeal is required to be preferred within 45 days from the date of issue of copy of the order by the Board. If the legislature intended that the Board is not required to supply copies of the order to the parties, then the language of Section 25 would have been different and the requirement of issue of copy to the aggrieved party would not have been incorporated therein. Clause 38 of the Regulations provides for inspection and copies of documents etc. by a person who is a party to the proceedings before the Board. If such person wants inspection or copies of the records including documents forming part of the proceedings, then he has to make an application for that purpose. However, there is nothing in the language of Clause 38 of the Regulations from which it can be inferred that a person aggrieved by the order of the Board can file an application under that clause for supply of copy of the order sought to be appealed against and the period of limitation is to be counted from the date of supply of such copy.

In **Dewan Bahadur Ramgopal Mills** case (supra), the learned Single Judge considered a question similar to the one raised by the petitioner, referred to Sections 18 and 25 of the Act and held that the time prescribed for filing an appeal under Section 25 starts running from the date of receipt of copy of the order and the mere fact that the party had knowledge of the scheme framed by the Board is not sufficient for treating the appeal as barred by time. The relevant portion of paragraph 2 of that judgment is reproduced below:

> "…….The contention of the learned Counsel for the petitioner is, appeal has to be made within forty-five days from the date on which a copy is issued to the aggrieved person, and according to him, under Section 18 (3) (a) of the Act a copy has to be necessarily issued to him by the Board and there is no question of making application for copy of the scheme for preferring an appeal. It is true that in the present

case the scheme was published in the news papers and the 1st respondent also found that the petitioner had known as early as on 11-8-1998 that the scheme had been accepted and prepared by the BIFR, but he did not take any steps to obtain a copy and file an appeal. The sole ground on which the appellate Court has rejected the appeal was that the petitioner was aware of order having been passed by BIFR and he did not file the appeal within forty five days from the date of his knowledge, therefore the appeal was time barred. It is contended that the knowledge is not pertinent for the purpose of calculation of time for filing the appeal in view of mandate of Section 18 (3) (a) and Section 25 of the Act. Section 25 makes it obligatory to file an appeal within forty-five days from the date the copy is issued and Section 18 (3) (a) makes it obligatory to issue a copy. Therefore, though the petitioner has knowledge or not, the appeal is maintainable if it is filed within forty-five days of issuance of copy. In the present case the appeal has been, filed within forty- five days of issuance of copy."

We are in complete agreement with the views expressed by the learned Single Judge on the interpretation of Sections 18(3) and 25(1) of the Act. As a corollary, we hold that the order impugned in this writ petition is vitiated by an error of law apparent on the face of the record and is liable to be quashed on that ground.

In the result, the writ petition is allowed. Order dated 18-9-2006 passed by the Appellate Authority in Appeal No.43 of 2006 is set aside and it is declared that the appeal filed by the petitioner was within limitation prescribed under Section 25(1) of the Act. The Appellate Authority shall now hear the appeal on merits and decide the same in accordance with law.

At this stage, Sri V. Venkataramana made a request that the Court may direct the Appellate Authority to decide the matter at an early date.

The request of the learned counsel is reasonable and is accepted. The parties are directed to appear before the Appellate Authority on 21-05-2007. We hope and trust that the Appellate

Authority will, as far as possible, dispose of the appeal within next two months.

G.S. SINGHVI, C.J.

16th April, 2007

C.V. NAGARJUNA REDDY, J.

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[1] **1999 (4) ALT 412 = 1999 (5) ALD 21**